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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,150	04/14/2004	Riccardo Mares	02-476	6378

719 7590 08/28/2006

CATERPILLAR INC.  
100 N.E. ADAMS STREET  
PATENT DEPT.  
PEORIA, IL 616296490

EXAMINER
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LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/824,150

Applicant(s)

MARES, RICCARDO

Examiner

F. Daniel Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/14/04, 9/1/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 112***

Claims 2-4, 7-17 and are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 line 8-9 "said actuatable hydraulic control being adapted to generate a control signal indicative of a desired flow rate" is wrong. Claim 1 line 6-7 claims "the actuatable hydraulic control generates a hydraulic control fluid having a control pressure", which is the same as the control signal of claim 2 (as confirmed by claim 3). Claim 2 indicates that the actuatable hydraulic control generates two signals, the control pressure of claim 1 and the control signal of claim 2, which is not supported by the specification.

In claim 7 line 2 --device-- should be added after "switching".

In claim 10 line 2 "a neutral position" of the on-off valve appears to be the same as the "non activated condition" of the first switching device of claim 8 line 5.

In claim 12 line 3 "on" should be --one--.

In claim 16 line 2 and claim 17 line 2 and 4 "said directional distributor valve" is confusing, since there is a "distributor" (e.g. claim 1 line 13 and a "pilot operated directional on-off valve" (e.g. claim 9 line 2), but no directional distributor valve. In claim 17 line 3 "the distributor pilot line" is confusing, since there is only a "first pilot line" of the directional on-off valve (claim 11 line 2).

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 27-29 and 30-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4, 6, 32-34 and 34 of U.S. Patent No.7,003,948. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of the instant claims are found in the corresponding claims of U.S. Patent No.7,003,948.

Claims 1; 15-17; 18-26 and 30-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1; 17; 18-26 and 27-29 of U.S. Patent No.7,003,948 in view of German 4405472. Claims 1, 18-26 and 27-29 of U.S. Patent No.7,003,948 claim all the limitations of claims 1, 17, 18-26 and 30-32; including a variable flow (e.g. claim 1 line 8-9) supply means connected in a closed circuit with two motors; but does not claim that the system and method includes a distributor connected to an hydraulic adjustment device for adjusting the variable flow rate of the supply means; the distributor having a control position which directs hydraulic control fluid to the adjustments device upon actuation; or that the supply means is a variable displacement axial piston type swash plate pump, with the adjustment device being double acting servo piston, having two piston chambers; wherein the distributor connects both chambers to tank in a neutral position.

German 4405472 teaches, for a variable flow supply means (400, fig 3) connected in a closed circuit with a motor (18, fig 2); that the system and method includes a distributor (414, fig 3) connected to an hydraulic adjustment device (420, fig 3) for adjusting the variable flow rate of the supply means; the distributor having a control position which directs hydraulic control fluid (in 403, 405, via 402, fig 3) to the adjustment device upon actuation; and that the adjustment device is double acting servo piston, having two piston chambers; wherein the distributor connects both chambers to tank in a neutral position (via either 413 or 402).

Since the claims of U.S. Patent No.7,003,948 do not claim details of the control for the supply means and German 4405472 discloses these details; it would have been obvious at the time the invention was made to one having ordinary skill in the art to control the supply means of the respective claims of U.S. Patent No.7,003,948 using a distributor connected to an hydraulic adjustment device for adjusting the variable flow rate of the supply means; the distributor having a control position which directs hydraulic control fluid to the adjustment device upon actuation; wherein the adjustment device is double acting servo piston, having two piston chambers; with the distributor connecting both chambers to tank in a neutral position, as taught by German 4405472; as a matter of engineering expediency.

Official notice is taken that variable displacement pumps are well known to include axial piston swash plate type pumps. it would have been obvious at the time the invention was made to one having ordinary skill in the art to use a variable displacement axial piston type swash plate pump for the supply means of the respective claims of U.S. Patent No.7,003,948, as a matter of engineering expediency.

### ***Claim Rejections - 35 USC § 101***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 2 and 3, 5, 6, 7-14 and 33 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 4, 5, 6, 10-17 and 34, respectively of U.S. Patent No.7,003,948.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-7 and 27-29 are rejected under 35 U.S.C. § 102(b) as being anticipated by German 4405472 (see discussion above or below).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 2 and 30 are rejected under 35 U.S.C. § 103 as being unpatentable over German 4405472 in view of Campbell et al, Holdeman et al and Malm et al. German 4405472 discloses a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (400, fig 3) connected in a closed circuit with a motor (18, fig 2), by two working lines; a distributor (414, fig 3) connected to an hydraulic adjustment device (420, fig 3) for adjusting the variable flow rate of the supply means; the distributor having a control position which directs hydraulic control fluid (in 403, 405, via 402, fig 3), from a hydraulic adjustment device (see e.g. fig 12), to the adjustment device upon actuation and having a neutral position in which it connects the adjustment device to a tank (via either 412 or 402); but does not disclose two

hydraulic users connected to the two working lines by a second connection control, responsive to a control signal to selectively provide serial or parallel connection of the two users; wherein the control signal is indicate of a desired flow rate.

Holdeman et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (e.g. 35, fig 1) connected in an open circuit with a motor (56, 62, fig 2), by two working lines (42, 70); that there are two hydraulic users connected to the two working lines by a second connection control (98, 100, fig 2), responsive to a control signal (transmission input signal) to selectively provide serial or parallel connection of the two users; wherein t he control signal is indicate of a desired flow rate (e.g. column 5 line 1-5).

Campbell et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (70, fig 2) connected via two working lines (120, 114), to two hydraulic users (13a, 13b), by a second connection control (71, fig 2), to selectively provide serial or parallel connection of the two users; that the system is a closed system.

Malm et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (30) connected via two working lines (52, 184), to two hydraulic users (13a, 13b), by a second connection control (190, fig 2), to selectively provide serial or parallel connection of the two users; that the purpose of the second connection is to provide a lower flow rate for a given speed in the series connection and a higher output torque for the parallel connection (e.g. column 2 line 1-6).

Since the system of German 4405472 is a closed circuit system, since Campbell et al teaches that a series/parallel connection for two motors can be used in a closed circuit; and since Malm et al teaches the purpose of a series/parallel connection for two motors; it would have been obvious at the time the invention was made to one having ordinary skill in the art to connect the two working lines of German 4405472 to two hydraulic users by a second connection control, responsive to a control signal, to selectively provide serial or parallel connection of the two users; wherein the control signal is indicate of a desired flow rate, as taught by Campbell et al and Holdeman et al,

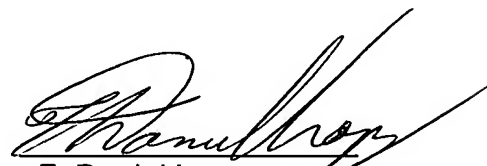
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for the purpose of providing a lower flow rate for a given speed in the series connection and a higher output torque for the parallel connection, as taught by Malm et al.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

A handwritten signature in black ink, appearing to read 'F. Daniel Lopez', with a stylized flourish extending from the end.

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
August 17, 2006